

Persons who transfer tangible personal property incident to providing service under separate maintenance agreements or service contracts are acting as servicemen and incur Use Tax liability based upon their cost price of tangible personal property transferred incident to the completion of the maintenance agreements. See 86 Ill. Adm. Code 140.301(b)(3). (This is a GIL).

December 21, 1999

Dear Xxxx:

This letter is in response to your letter dated October 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please consider and accept this letter as a request for an opinion regarding your Department's position on the applicability of sales, use, premium and other applicable taxes to extended service contracts.

We are currently researching your state's laws pertaining to extended service contracts and the application of sales, use, premium and other applicable taxes. In undertaking this research, we have reviewed statutes, regulations, attorney general opinions, bulletins, circulars, directives, revenue rulings or case law to determine whether sales, use, premium or other applicable taxes should be imposed on extended service contracts. To add clarity to this opinion, we would very much appreciate your analysis in answering the following questions:

(1) Whether extended service contracts offered by a manufacturer are subject to sales, use, premium or other applicable taxes?;

(2) Whether extended service contracts offered by a third party are subject to sales, use, premium or other applicable taxes?;

(3) If the extended service contracts are subject to sales, use, premium or other applicable taxes, what party, the purchaser, seller, or obligor/provider, would be ultimately responsible for the collection and remittance of the taxes?;

(4) If the extended service contracts are subject to sales, use, premium or other applicable taxes, which state's laws would govern the

sales transaction assuming that the purchaser is located in your state but the seller is in another state? Would your opinion be different if the locations of the purchaser and seller are reversed?;

(5) When sales, use, premium and other applicable taxes are collected, are there any disclosures that must be made and, if so, what disclosure language, if any, is required?;

(6) Does your state require the collector of the sales, use, premium and other applicable taxes to be licensed as a sales or use tax collection agent or hold any similar or related licenses?; and

(7) If the extended service contracts are subject to sales, use, premium or other applicable taxes, would your opinion change if the contracts were purchased over the Internet, by direct mail or from a telemarketer?

Since time is of the essence, we would very much appreciate a prompt response before year's end if at all possible. Please do not hesitate to contact me if you have any questions or if you require any additional information.

The taxability of service contracts or maintenance agreements is dependent upon whether charges for these agreements are included in the selling price of the tangible personal property that is sold. If said charges are included in the selling prices, those charges are part of the gross receipts of the retail transactions and are subject to tax. Such is often the case in a manufacturer's warranty of automobiles, for instance. No tax is incurred on the maintenance services or parts when the repairs or servicing is performed.

Alternatively, businesses may sell service agreements or maintenance contracts as separate agreements for predetermined fees. In these transactions, the proceeds from the sale of such contracts or agreements are not subject to tax. However, persons who transfer tangible personal property incident to providing service under separate maintenance agreements or service contracts are acting as servicemen and incur Use Tax liability based upon their cost price of tangible personal property transferred incident to the completion of the maintenance agreements. See 86 Ill. Adm. Code 140.301(b)(3). Persons for whom maintenance is performed do not incur tax. Sales of extended warranties or maintenance contracts of this type over the Internet, by direct mail or from a telemarketer do not change the above analysis. Persons who engage in service work in Illinois under the provisions of this type of maintenance contracts incur a Use Tax liability on tangible personal property transferred incident to completion of the maintenance contract.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further

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questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.